IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 1214 OF 2004

Shri Vithoba Shivram Chalke & anr. ... Appellants

V/s

Smt. Lekha Vasant Nagavekar & anr. ... Respondents

Ms. Seema Sarnaik for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 1ST NOV., 2004.

P.C.:

1. Heard learned counsel for the appellant.

2. The appellant has filed this appeal against the judgment and order passed by the Joint District Judge, Ratnagiri, dated 13.7.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr. Divn., Ratnagri dated 20.2.1998 dismissing the suit.

3. The plaintiff came with the case that the property bearing Gat No. 52/2 and 95/2 situated at village Pomendi Khurd, Tal. Ratnagiri are the subject matter of the suit alleging tht the defendant’s mother Subhada

sold Survey No. 95/3 of village Pomendi to them and at the same time agreed to sell the suit properties and has placed plaintiff in possession of these properties. According to the plaintiff, before she could execute the sale-deed in respect of these properties, she expired. After her death, Vithabai, the cousin of Subheda being guardian of defendants had agreed to sell the suit lands to the plaintiff and had taken Rs.1000/-. The sale deed was to be completed after permission. Vithabai died on 16.6.1986 and the sale deed could not be completed. It is alleged that the plaintiff raised construction on the suit properties but the defendants have obstructed them and also put obstruction in the process of permission. Hence the plaintiffs have filed the suit for perpetual injunction and damages.

Defendants resisted the suit on the ground that there was no such agreement between the parties to sale the property.

4. The learned Trial Judge came to the conclusion that the alleged oral agreement between the parties was not proved and, therefore, the consequent issues were also answered in the negative and suit came to be dismissed.

The appeal was carried to the District Court, Ratnagiri. The learned appellate Court Judge also agreed with the findings recorded bythe learned Trial Judge and dismissed the appeal. Hence the second appeal.

5. At the outset, it may be noted that the only question for determination before the both Courts below was, whether the alleged oral agreement was proved or not ? Both the Courts below have concluded that the mere document of receipt was not sufficient to prove the oral agreement especially for want of any other cogent supporting evidence and, as such, the findings were recorded against the plaintiff. In my considered view, both the Courts below have recorded the concurrent findings of facts which need not be disturbed as they are seen to be based on proper appreciation of evidence. As has been observed by the Apex Court in the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar, reported in AIR 1999 SCC 2213,** it is well settled legal position that the issues of fact seen to be considered by both the Courts below on the basis of proper evidence and hence the second appeal cannot be entertained as contemplated under Sec.100 of the C.P.C. since there is no involvement of substantial question of law.

In the result, the second appeal stands dismissed in

limine with no order as to costs.

C. c. expedited.

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